

Treaty between the Federal Republic of Germany and the Republic of Congo concerning the encouragement and mutual protection of capital investments

The Federal Republic of Germany and the Republic of the Congo

Desiring to intensify economic cooperation between the two States,

In order to create favourable conditions for the capital investments by nationals or companies of one of the two States in the territory of the State and other

Recognizing that a contractual protection of such investments will be conducive to stimulating business and stimulate private initiative and, consequently, to increase prosperity of both nations

Have agreed as follows:

Article 1.

Each Contracting Party shall promote as far as possible capital investment in its territory of nationals or companies of the other Contracting Party and admit such investments in accordance with its legislation. the existing investments in each case in a fair and equitable manner.

Article 2.

(1) Neither Contracting Party shall investments in its territory by nationals or companies of the other Contracting Party who own or are subject to influence, to less favourable treatment than that accorded to investments of its own nationals or companies or to investments of nationals and companies of third States.

(2) Neither Contracting Party shall in its territory of nationals or companies of the other Contracting Party, as regards their activity in connection with investments to treatment less favourable than that accorded to its own nationals or companies or to nationals and companies of third States.

Article 3.

(1) Investments of nationals or companies of one Contracting Party shall enjoy in the territory of the other Contracting Party of a full protection and security.

(2) Nationals or companies of a Contracting Party may be expelled from their investments in the territory of the other Contracting Party only for reasons of public utility and against compensation. The compensation shall correspond to the value of the expropriated investment, shall be effectively realizable, freely transferable and shall be paid without delay. At the time of expropriation, at the latest, adequate provision shall be made for the determination and payment of the compensation. The legality of the expropriation and the amount of the compensation shall be verifiable by ordinary judicial proceedings.

(3) Nationals or companies of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, a state of national emergency or riot in the territory of the other Contracting Party will benefit from this a restitution, compensation or other treatment indemnities, which shall not be less favourable than that accorded to its own nationals or companies. Such payments shall be freely transferable.

(4) With respect to the matters governed by this article, nationals or companies of one Contracting Party shall enjoy in the territory of the other Contracting Party of the most-favoured-nation treatment.

Article 4.

Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of the investment; and the proceeds of their capital and, in the event of liquidation, to the proceeds from the liquidation.

Article 5.

If a Contracting Party by virtue of a guarantee given in respect of an investment in the territory of the other Contracting Party makes payment to its own nationals or companies, the other Contracting Party, without prejudice to the rights of the first Contracting Party under Article 11, would recognize the transmission by virtue of the law or a transaction of all the rights and claims of such nationals or companies to the first Contracting Party as well as the subrogation in favour of all the rights and claims (rights transmitted) that the first Contracting Party is entitled to exercise to the same extent as its predecessor. with regard to the transfer of payments to carry out by the Contracting Party in question under the transmission of rights, the provisions of paragraphs 2 and 3 of article 3 and Article 4 shall apply mutatis mutandis.

Article 6.

(1) Unless the parties concerned have concluded an arrangement to the contrary, approved by the competent authorities of the Contracting Party in whose territory the investment is located, transfers under paragraph 2 or 3 of Article 3 and Article 4 or 5 shall be made without delay and at the rate of exchange applicable on the date of the transfer for current transactions.

(2) The rate applicable to current transactions shall be based on the par value agreed upon with the International Monetary Fund and shall not exceed the margin of fluctuation permitted under Article IV, Section 3 of the International Monetary Fund Agreement on either side of the parity.

(3) If, for one of the Contracting Parties, there is no exchange rate within the meaning of paragraph 2 on the date of the transfer, the official rate fixed by that Contracting Party for its national currency in relation to the U.S. dollar, another freely convertible currency or gold shall apply. If no such rate is fixed, the competent authorities of the Contracting Party in whose territory the investment is located shall accept a fair and equitable rate of exchange.

Article 7.

(1) If the legislation of one of the Contracting Parties or international obligations, now existing or to be established in the future between the Contracting Parties outside this Treaty, provides for general or special regulations which accord to investments of nationals or companies of the other Contracting Party more favorable treatment than that provided for in this Treaty, such regulations shall take precedence over this Treaty to the extent that they are more favorable.

(2) Each Contracting Party shall comply with any other obligation it has assumed with respect to investments of nationals or companies of the other Contracting Party in its territory.

Article 8.

(1) The term "investment" includes all categories of goods, in particular, though not exclusively

- a) Ownership of movable and immovable property as well as any other rights in rem such as mortgages, liens etc.;
- b) The rights of participation in companies and other kinds of interests;
- c) Claims to money or to any performance having an economic value;
- d) Copyrights, industrial property rights, technical processes, trade names and good will;
- e) The concessions under public law, including concessions to search and exploitation.

The alteration of the form in which assets are invested does not affect their status as investment.

(2) The term "income" refers to amounts paid as profit or interest on investments for a specific period of time.

(3) The term "nationals"

- a) With respect to the Republic of Germany:

The Germans within the meaning of the Basic Law for the Federal Republic of Germany;

b) With regard to the Republic of the Congo:

The Congolese within the meaning of the Congolese Nationality Code the Republic of the Congo.

(4) The term "companies"

a) In respect of the Federal Republic of Germany:

Any legal person as well as any other trading company or company or association with or without having legal personality, its seat in the territory of the Federal Republic of Germany and legally constituted in accordance with the laws, irrespective of whether the liability of its members, participants or Members is limited or unlimited and of whether or not a profit or not its activities;

b) With regard to the Republic of the Congo:

Any legal person as well as any other trading company or company or association with or without legal personality, having its seat in the territory of the Republic of the Congo and formed in accordance with the legislation in force, irrespective of whether the liability of its members, participants or Members is limited or unlimited and of whether or not its activities a profit or not.

Article 9.

Are subject to the provisions of this Treaty investments by companies or nationals of either Contracting Party, in accordance with the legislation of one Contracting Party effected within the territory of the latter immediately before the entry into force of this Treaty. This provision shall not affect the agreement of 27 February 1953 on the external debts of Germany.

Article 10.

Within the framework of this Treaty, each Contracting Party shall accord national treatment by virtue of the fact that this treatment shall also apply in the same material by the other Contracting Party.

Article 11.

(1) Disputes concerning the interpretation or implementation of this Treaty shall, if possible, be settled through the governments of both Contracting Parties.

(2) If a dispute cannot be settled in this way, it will be submitted to an arbitral tribunal at the request of one of the two Contracting Parties.

(3) The arbitral tribunal shall be constituted ad hoc; each Contracting Party shall appoint one member and these two members as Chairperson shall agree to select a national of a third State to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months and the Chairman within three months after the date on which either Contracting Party has notified the other that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 have not been observed and in the absence of any other agreement, each Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented, the Vice-President should make the necessary appointments. If the Vice-President is also a national of either Contracting Party or if he is also prevented, the member of the Court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. these decisions shall be binding. Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its defence in the proceedings before the arbitral tribunal; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may fix a different regulation concerning costs. the arbitral tribunal shall draw up its own rules of procedure.

Article 12.

The provisions of the present Treaty shall remain in force even in the event of conflicts arising between the Contracting Parties, without prejudice to the right to take provisional measures permissible under the general rules of international law.

Such measures shall be abrogated at the latest at the time of the effective termination of the conflict, whether diplomatic relations have been restored or not.

Article 13.

A 1 except as provided in paragraph 7 of the Protocol relating to air navigation, this Treaty shall also apply to Berlin, unless otherwise declaration made by the Government of the Federal Republic of Germany to the Government of the Republic of the Congo not later than three months after the entry into force of this Treaty.

Article 14.

(1) This Treaty shall be ratified; the exchange of instruments of ratification will take place as soon as possible in Bonn.

(2) This Treaty shall enter into force one month after the exchange of instruments of ratification. it shall remain in force for a period of ten years and shall be extended indefinitely unless denounced in writing by either Contracting Party one year before its expiration. at the end of the period of ten years, this treaty may be denounced at any time, but it shall remain in force for a period of one year from the date of its termination.

(3) In respect of investments made before the date of expiry of the Treaty, the provisions of Articles 1 to 13 shall continue to apply for a period of twenty years from the date of termination of this Treaty.

DONE at Brazzaville on September 13, 1965 in four copies, two in German and two in French, each text being equally authentic.

For the Federal Republic of Germany

J. Haßlacher

For the Republic of the Congo

Ebouka-Babackas

Upon signature of the Treaty concerning the encouragement and reciprocal protection of investments between the Federal Republic of Germany and the Republic of the Congo, the undersigned plenipotentiaries, have agreed, in addition, the following arrangements which shall be treated as an integral part of the Treaty:

Article 1. Ad Article 1

Investments made in accordance with the legislation of one Contracting Party within the scope of his right by nationals or companies of the other Contracting Party, shall enjoy the full protection of this Treaty.

Article 2. Ad Article 2

(a) Activities within the meaning of paragraph 2 of Article 2 shall include, but not be limited to, the administration, use, and enjoyment of an investment. The following in particular shall be considered as "less favourable treatment" within the meaning of paragraph 2 of Article 2: any restriction on the purchase of raw and auxiliary materials, energy and fuel as well as means of production and operation of any kind, any hindrance to the sale of products within the country and abroad as well as any other measure having a similar effect. Measures taken for reasons of public safety, order, health or morality shall not be considered as "less favourable treatment" within the meaning of Article 2.

(b) Paragraph 2 of Article 2 shall not apply to entry, residence and employment as a wage earner.

Article 3. Ad Article 3

The provisions of paragraph 2 of Article 3 are also applicable to the transfer of a capital investment into public ownership, its

placing under public control; or similar interventions by public authorities. The term "expropriation" means the withdrawal or limitation of any property right which, alone or together with other rights, constitutes a capital investment.

Article 4. Ad Article 4

Any alienation for the purpose of relinquishing all or part of the investment shall also be considered a "liquidation" within the meaning of Article 4.

Article 5. Ad Article 6

Any transfer which takes place within the time normally required for compliance with the transfer formalities shall be considered to be effected "without delay" within the meaning of paragraph 1 of Article 6. The time limit shall begin to run on the date of the submission of a request for transfer and shall in no case exceed two months.

Article 6. Ad Article 8

(a) The proceeds of the investment and, in case of reinvestment, the proceeds of such reinvestment shall enjoy the same protection as the Investment.

(b) Without prejudice to other precedents for the determination of nationality, a person shall be deemed to be a national of a Contracting Party if he or she holds a national passport issued by the competent authorities of the Contracting Party in question.

Article 7.

Each Contracting Party shall refrain from taking measures contrary to the principles of free competition and likely to eliminate or hinder the participation of the sea or air navigation of the other Contracting Party in the transportation of goods intended for capital investments within the meaning of this Treaty, or of persons whose transportation takes place in connection with such investments. This provision shall also apply to goods acquired in the territory of a Contracting Party or of a third State with funds from an enterprise in which goods have been invested within the meaning of this Treaty, and to persons whose transport takes place on behalf of such an enterprise.

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For the Federal Republic of Germany

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